

UNITED STATES DEPARTMENT OF COMMERCE Pat nt and Trademark Offic

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Washington, D.C. 20231

FILING DATE FIRST NAMED INVENTOR APPLICATION NO. ATTORNEY DOCKET NO. 09/678,766 10/02/00 DORSCHNER Α BEIERSDORF 6 EXAMINER -HM12/0823 NORRIS MCLAUGHLIN & MARCUS, P.A. ART UNIT PAPER NUMBER 220 EAST 42ND STREET 30TH FLOOR NEW YORK NY 10017 1616 **DATE MAILED:**

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

08/23/01

Application No.				
## Carminary Examinary Examinary Sharmila S. Goliamudi 1616		Application No.	Applicant(s)	
Examiner Sharmila S. Collamudi 1616	Office Action Summary	09/678,766	DORSCHNER ET AL.	
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address Pariod for Reply A SHORTENED STATUTORY PERIOD FOR REPLY S SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Enterous or term may be available under the provision of 37 CPR 1.18 (a). In an event, however, may a reply be timely fitted under SX (5) MONTHS from the mailing date of this communication. Enterous or term may be available under the provision of 37 CPR 1.18 (a). In an event, however, may a reply be timely fitted under SX (5) MONTHS from the mailing date of this communication. Fallule to reply sethin the mailing date of the communication of the provision of the provision of the provision of the provision of the communication. Fallule to reply within the set or extended period for reply will, by stabulate, date the application to become ABANDONEO (39 U.S.C. § 133). Any days provided by the Official or than these monaid after the mailing date of the communication, even if timely filled. may reduce any Status 1) ■ Responsive to communication(s) filled on Q2 October 2000. 2a) □ This action is FINAL. 2b) ■ This action is non-final. 3] □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ■ Claim(s) 1-2 is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 6) ■ Claim(s) 1-2 is/are allowed. 6) ■ Claim(s) 1-3 is/are allowed. 7) □ Claim(s) is/are allowed. 9) ■ The specification is objected to by the Examiner. 10 □ The drawing(s) filed on is/are objected to by the Examiner. 11 □ The proposed drawing correction filed on is/are objected to by the Examiner. 12 □ The above claim(s) is/are objected to by the Examiner. 13 □ All b) □ Some * c) □ None of: 14 □ Certified copies of the priority documents have been received in Application No. 2a □ Ceptified copies of the priority docume		Examiner	Art Unit	
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U.S. Patent and Trademark Office PTO-326 (Rev. 01-01) Application/Control Number: 09/678,766

Art Unit: 1616

DETAILED ACTION

Specification

The disclosure is objected to because of the following informality: The heading "A Brief Description of the Drawings" followed by the brief description, is missing. The appropriate correction is required.

Claim Objections

The examiner suggests reconstructing the sentence of claim 1 such that the "comprising at least..." is on the same line as "O/W microemulsion." The examiner also suggests deleting "a" in line 1 of claim 1 and inserting "a" in line 3 after "properties."

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 2, and 3 the terms "in particular" and "preferable" are relative terms, which render the claims indefinite because it is unclear whether the limitations following the terms are indeed the limitations of the claim. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth

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the metes and bounds of the patent protection desired. In the present instance, claim 2 recites the broad recitation of .01% to 20%, and the claim also recites .05% to 10% and .5% to 6%, which are the narrower statement of the range/limitation. In instant claim, the claim recites the broad recitation of .1% to 10% and the claim also recites .5% to 6%, which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ascione et al (5858334). Ascione et al disclose oil in water emulsions containing dihydroxyacetone. The cosmetic composition contains .5% to 20% emulsifier and .5% to 10% dihydroxyacetone (see example 1 and col 3 and 4, beginning on line 55). The reference's emulsifiers such as fatty alcohol ethoxylates read on the instant claims (col 2 and 3, beginning on line 46).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ascione et al.

Ascione et al as set forth above, teach the use of .5 to 20% emulsifier and .5% to 10% dihydorxyacetone in the composition. Ascione et al does not teach using .01% of an emulsifier and .1 % of dihydroxyacaetone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to manipulate the conditions to obtain the best possible results.

One would be motivated to do so since the general percents (.5%-20%) (.5%-10%) are disclosed in the prior art, it is not inventive to discover the optimum or workable range in the field through routine experimentation.

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

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SABIHA QAZI, PH.D PRIMARY EXAMINER

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